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BEFORE THE
Federal Communications Commission

WASHINGTON, D.C.

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In the Matter of)

Implementation of Sections 3(n)
and 332 of the Communications Act)

Regulatory Treatment of
Mobile Services)

GN Docket No. 93-252

REPLY COMMENTS OF
US MOBILCOMM, INC.

Richard Rubin
FLEISCHMAN AND WALSH
1400 Sixteenth St., N.W.
Suite 600
Washington, D.C. 20036
(202) 939-7900

Eliot J. Greenwald
Howard C. Griboff
FISHER WAYLAND COOPER LEADER
& ZARAGOZA L.L.P.
2001 Pennsylvania Ave., N.W.
Suite 400
Washington, D.C. 20006
(202) 659-3494

Its Attorneys

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Summary

The record of this proceeding overwhelmingly confirms that the Commission should promulgate rules fostering the growth of regional networks of 220 MHz systems and allowing extended construction schedules for the licensees who associate with such networks. Of all the proposals for the development of such networks, the proposal of US Mobilcomm, Inc. ("USM") is in the public's best interest. USM's is the only proposal that delicately balances the implementation time needed for deployment of regional networks with the need to make available 220 MHz to the broadest geographic area on a speedy basis. To insure a robust 220 MHz industry, the Commission should not adopt spectrum caps of any kind for 220 MHz regional networks. The Commission should also reject any requirement of a financial showing for networks already constructing and/or operational. Finally, as requested by all commenters, the Commission should allow current 220 MHz licensees the opportunity to modify their systems before accepting new 220 MHz applications.

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**REPLY COMMENTS OF
US MOBILCOMM, INC.**

1. US MobilComm, Inc. ("USM"), by its attorneys and pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415 (1992), hereby submits its reply to the comments filed on the Further Notice of Proposed Rulemaking ("FNPRM") in the above-referenced docket.^{1/} USM's Comments on the FNPRM addressed the regulatory treatment of commercial 220-222 MHz local service ("220 MHz"), a niche service serving the relatively small traditional voice dispatch market.^{2/} USM's Comments espoused regional 220 MHz mobile radio networks with corresponding construction milestones, and represented a counterproposal to the Petition for Declaratory Ruling and Request for Rule Waiver filed by SunCom Mobile & Data, Inc. ("SunCom") (February 1, 1994).^{3/}

^{1/} Further Notice of Proposed Rulemaking, Implementation of Sections 3(n) and 332 of the Communications Act: Regulatory Treatment of Mobile Services, GN Docket No. 93-252, FCC 94-100 (May 20, 1994).

^{2/} See Comments of US MobilComm, Inc. (June 20, 1994).

^{3/} SunCom's Petition and Request were incorporated into the docket in the FNPRM at ¶ 38. Realizing the weaknesses of
(continued...)

2. USM maintains that regional networks are necessary if 220 MHz systems are to successfully serve the voice dispatch market niche. Review of the Comments in this proceeding confirms that USM's counterproposal presents the most reasonable approach to expediently serve the needs of the 220 MHz consumer over the broadest geographic area. USM urges the Commission to reject license aggregation caps that would impede the growth of the industry and undermine its ability to compete in the land mobile marketplace. The Commission should also reject any requirement of financial showings for regional networks, which would constitute an unnecessary paperwork burden for entities already undergoing construction. Finally, USM reiterates that the Commission should accept modification applications from current 220 MHz licensees seeking facility improvement prior to accepting applications for new licenses.

I. In Accordance With USM's Counterproposal, the Commission Should Promulgate Rules Fostering Regional Networks of 220 MHz Systems

A. Commenters Overwhelmingly Agree That the Commission Should Allow Regional Networks of 220 MHz Systems and Extended Construction Schedules

3. The FNPRM at ¶ 38, invited comment on whether the Commission should allow regional networks of 220 MHz systems. The overwhelming majority of parties filing comments on this

^{2/}(...continued)

its original plan, SunCom took the opportunity of this comment cycle to revise its proposal. See Comments of SunCom at 3-4 (June 20, 1994).

issue agree that the Commission should foster the development of regional networks of 220 MHz systems, for many of the same reasons noted by USM. Among these reasons is that the successful utilization of a five-channel commercial narrowband license hinges on multi-site systems offering full market coverage and depth of channel capacity.^{4/} Furthermore, numerous Commenters agreed that extended implementation schedules are warranted for licensees that commit to being part of networks.^{5/} Despite this overall agreement among the commenters, there were differences in how to implement the regional networks, particularly with respect to the issues of construction milestones, license aggregation caps, and the making of financial showings.

^{4/} Comments of USM at 6. See, e.g., Comments of AMTA at 24 (June 20, 1994); NABER at 24 (June 20, 1994); RF Technologies Group, Inc. at 3 (June 20, 1994); Simron, Inc. at 8 (June 20, 1994); Amended Comments of Russ Miller Rental at 11 (June 23, 1994); accord Comments of PCC Management Corp. at 9 (June 20, 1994) (networks lead to spectrum economies and advanced service to the public); cf. Comments of SmartLink Development L.P. at 5 (June 20, 1994) (regional 220 MHz systems may eventually prove to be desirable); E.F. Johnson Company at 11 (June 21, 1994) (if technically feasible).

^{5/} See, e.g., Comments of AMTA at 25-26; RF Technologies at 5; Simron at 13-14; SmartLink at 8; SunCom at 3; Amended Comments of Russ Miller Rental at 11; accord Comments of PCC Management at 9 (extended implementation schedules should be available to commonly managed or commonly owned systems involving the construction of a substantial number of channels); cf. Comments of Global Cellular Communications, Inc. and Jean M. Warren at 5 n.5 (June 20, 1994) (extensions if reasonable, limited in scope, and seeks solution to a real problem); SEA, Inc. at 16 (June 20, 1994) (brief extensions with proper rationale).

B. The Commission Should Establish
Realistic Construction Milestones That
Ensure Breadth of Construction, Not
Simply Numbers of Channels

4. Of the four commenters proposing complete schedules of milestones for construction of 220 MHz regional networks,^{6/} only USM meets the demand of end users by making service rapidly available to all markets in the regional network, and afterwards, adding additional channels as demand (i.e., subscribership) develops. For convenience, USM summarizes its construction milestone proposal:

- a) By October 3, 1994, the network operator must file with the FCC a network plan, which would include a list of licenses that it will be constructing and managing, and a certification from each licensee that it is part of the network.
- b) By December 2, 1994 (the Commission's construction deadline), the network must have constructed and placed into operation at least one five-channel system in at least each of 10 of the top 30 markets as defined at Section 90.741 of the Commission's rules.
- c) By December 2, 1995, the network must have constructed and placed into operation at least one five-channel system in each of the remaining markets that it proposed to construct.
- d) By December 2, 1996, the network must complete construction of all channels in all markets.

^{6/} The four complete construction milestone proposals are those of USM, SunCom, AMTA, and Russ Miller Rental, each discussed at length below. RF Technologies set a three year construction deadline but provided no milestone information. Comments of RF Technologies at 5. SmartLink's proposal is incomplete; it would require construction of at least two of every five channels in each network block (i.e., 40% of the aggregate system) by December 2, 1994, but goes no further. Comments of SmartLink at 8. For the same reasons as USM provides below in discussing some of the other milestone proposals, the proposals of RF Technologies and SmartLink should be rejected.

5. The proposed construction milestone schedules of SunCom, AMTA and Russ Miller Rental fall short of USM's delicate balancing of implementation time needed for deployment of a regional system with the need to make available 220 MHz service on a speedy basis. The most pivotal difference between these parties' proposals and that of USM is that these parties set their milestones based on percentages of systems constructed.^{2/} For example, if there are 200 five-channel participants in a network, 20% of construction means construction of 40 five-channel systems, that is, 200 channels. With a milestone based on percentage of systems, the network operator could concentrate on building all of the channels in a few markets, thereby inefficiently building initial excess capacity in these markets, while ignoring the demand in the rest of the country.

6. The percentage approach is arbitrary and gives no credence to the need to construct geographic areas, the essence of USM's proposal, which is most concerned with establishing a breadth of service in a rapid manner. For example, USM will have a minimum of 10 major markets in operation before the December 2, 1994 deadline. By initially building part of the channel capacity of each market, USM's proposal incorporates a breadth of service approach, providing service to initial subscribers, and then expanding each market as subscribership and demand increases. Additionally, only USM's plan will assure that service will be available to a reasonable portion of the proposed

^{2/} See Comments of AMTA at 26; SunCom at 3; Amended Comments of Russ Miller Rental at 11.

network by the expiration of the Commission's original deadline. Therefore, the Commission should reject any proposal based on mere percentages of systems constructed, and adopt USM's construction milestones based on broad market coverage.

7. The three non-USM proposals are insufficient for other reasons as well. SunCom's five-year build-out proposal^{8/} remains unsatisfactory for the same reasons its eight-year proposal was unsatisfactory, i.e., it requires no completion of any portion of its network by the Commission's December 2, 1994 construction deadline. Moreover, five years is entirely too long a period of time to represent speedy delivery of service. Even after five years, SunCom's proposal does not insure that all licenses in each market will be built.

8. The AMTA and Russ Miller Rental construction schedules are unsatisfactory for the opposite reason. Both would require that 20% of the network be constructed by the Commission's construction deadline, based on the number of proposed channels in the network.^{9/} This schedule is arbitrary, and will work to the disadvantage of the public as well as the equipment manufacturers. A 20% construction milestone would limit the number of licenses a network group could include, since it could only include five times as many systems as it could physically

^{8/} SunCom's revised construction schedule reduces its original construction proposal from eight to five years and defines "market construction" as the lesser of 2 (or 3) licenses (depending on market size), or all licenses under management in the market. Comments of SunCom at 3-4.

^{9/} Comments of AMTA at 26; Amended Comments of Russ Miller Rental at 11.

build by December 2, 1994. The Commission should foster the development of broad networks with deep channel capacity, thus facilitating the ability of the 220 MHz industry to provide a quality, competitive service to an important niche market. Imposing what would amount to a practical cap on the breadth of a network would undermine the future of the proposed network and its ability to provide a competitive service to the public.

9. USM's proposal avoids the pitfalls of the alternative plans. It calls for a most reasonable and realistic minimum of 10 markets served by the December 2, 1994 deadline, followed by service to all markets by December 2, 1995, and construction of all systems by December 2, 1996. Adoption of USM's proposal will result in more licenses being built rather than being turned in to the Commission due to inability to timely construct. Furthermore, USM's construction schedule will benefit the equipment manufacturers since it will provide for much greater equipment sales in 1995 and 1996. The benefit to manufacturers will allow them to invest in manufacturing more advanced products to serve the public, as well as stimulate the economy through the hiring of the additional personnel which will be required to meet the greater demand.

C. To Insure a Robust 220 MHz Industry,
the Commission Should Not Adopt Spectrum
Caps of Any Kind For 220 MHz Regional
Networks

10. Three commenters propose a limit to the amount of licenses in which a particular regional operator can hold an ownership interest. AMTA proposes that regional operators should

be limited to holding an ownership interest in a maximum of eight five-channel systems per geographic area.^{10/} Russ Miller Rental similarly proposes a local channel cap of 40 channels per region.^{11/} RF Technologies' proposal would limit aggregation of channels to not more than one-half the total authorized in any given market, with additional capacity allowed based on showing.^{12/} USM believes that such limits would be a major obstacle in establishing a robust 220 MHz industry.

11. The Commission's initial decision in licensing MMDS (wireless cable) systems is instructive of the dangers of such proposed license caps. In its wireless cable proceeding, the Commission divided the eight available video channels into two channel groups in order to establish competition between the two MMDS operators.^{13/} The result was too little spectrum to provide even niche services and no added competition where it was truly needed: in the broader cable television market. Not until seven years after it first made this decision was the Commission able to correct it.^{14/} The Commission's elimination of the MMDS license restriction greatly facilitated the construction of the MMDS systems and enhanced MMDS operators' access to capital, as

^{10/} Comments of AMTA at 25. This proposal, however, is discredited as inconsistent with AMTA's overall opposition of adoption of CMRS spectrum caps, id. at 28.

^{11/} Amended Comments of Russ Miller Rental at 11.

^{12/} Comments of RF Technologies at 6.

^{13/} Report and Order, Instructional TV Fixed Service, 94 F.C.C.2d 1203, 1245 ¶ 105 (1983).

^{14/} Report and Order, Gen. Docket Nos. 90-54, 80-113, 5 FCC Rcd 6410, 6411 ¶¶ 8-9 (1990).

investors saw that MMDS operators could now achieve the mass of channel capacity required to satisfy subscriber demand.

12. Similarly, any caps on 220 MHz channels will impede the development of the 220 MHz industry as a niche service. Spectrum cap proposals could result in too little spectrum for certain 220 MHz networks to become successful in a land mobile marketplace dominated by large SMRs controlling several hundred times the entire spectrum allocated to the 220 MHz industry. Eight five-channel systems constitutes a total of only 400 kHz or 0.4 MHz of spectrum. This is 1/100th of the 40 MHz spectrum cap being considered by the Commission for CMRS generally.^{15/} Therefore, USM maintains that viable networks should be able to aggregate systems with no limit, provided that prior to any such aggregation, each of the systems is committed to being part of the regional network.^{16/}

D. The Commission Should Reject Any Requirement of a Financial Showing for Networks Already Constructing and/or Operational

13. AMTA proposes that regional entities be subject to similar financial showing requirements as those applied to nationwide commercial 220 MHz licensees. AMTA's primary reason for such a requirement is to curb speculation by entities who have no strong commitment to completing their systems.^{17/}

^{15/} FNPRM at ¶ 93.

^{16/} See Comments of USM at 6-7.

^{17/} Comments of AMTA at 27.

14. USM agrees that a financial showing makes sense as a pre-licensing showing, as was the case for the nationwide licenses, but such a showing is more burdensome on both the Commission and the operator of the proposed network and less effective than a showing based on actual construction of the network. By constructing, the regional entity affirmatively demonstrates its ability to construct and operate, and its desire to provide prompt service to the public, without the need for abstract showings of financial data. Indeed, the Commission can negate any need for financial showings simply by adopting USM's proposals for regional networks and its concomitant construction milestones.

II. As Requested by All Commenters, the Commission
Should Allow Current 220 MHz Licensees the
Opportunity to Modify Their Systems Before
Accepting New 220 MHz Applications

15. In its Comments, USM argued that it is in the public interest for the Commission to maintain the freeze on 220 MHz applications for new systems, and accept modification applications from current licensees for a brief period of time, to allow current licensees to improve their facilities without the threat of a mutually exclusive application being filed by a new party.^{18/} All parties filing comments on this issue hold the same position, supported by similar reasoning, i.e., that license preemption and loss of service is likely to occur unless incumbent licensees in need of modification are protected from

^{18/} Comments of USM at 11-12.

mutually exclusive applications when the FCC lifts the application freeze.^{19/} Therefore, the Commission should adopt the unanimous view of the commenters and allow current 220 MHz licensees the opportunity to modify their systems before accepting new 220 MHz applications. USM also proposed that licenses operating pursuant to STA should not be cancelled in the event the licensee's proposal for permanent modification cannot be granted. Rather, the Commission should provide such licensees an opportunity to amend their proposed modification to render it grantable, thereby avoiding the draconian result of license cancellation.^{20/}

Conclusion

For the above stated reasons, USM respectfully urges the Commission to adopt its regulations regarding the regulatory treatment of commercial 220 MHz local services in accordance with the above views.

Respectfully submitted,

US MOBILCOMM, INC.

By: Richard Rubin 
Richard Rubin

By: Eliot J. Greenwald
Howard C. Griboff

FLEISCHMAN AND WALSH
1400 Sixteenth St., N.W.
Suite 600
Washington, D.C. 20036
(202) 939-7900

FISHER WAYLAND COOPER LEADER
& ZARAGOZA L.L.P.
2001 Pennsylvania Ave., N.W.
Suite 400
Washington, D.C. 20006
(202) 659-3494

Its Attorneys

Dated: July 11, 1994

^{19/} See, e.g., Comments of AMTA at 22-23; E.F. Johnson at 23; Simron at 17-18.

^{20/} Comments of USM at 12-13.

CERTIFICATE OF SERVICE

I, Renee Gray, a secretary to the law firm of FISHER WAYLAND COOPER LEADER & ZARAGOZA L.L.P., hereby certify that on this 11th day of July, 1994, I served a true copy of the foregoing **"REPLY COMMENTS"** by first class United States Mail, postage prepaid, upon the following:

Thomas Gutierrez, Esq.
David A. LaFuria, Esq.
Lukas, McGowan, Nace &
Gutierrez, Chartered
1819 H Street, N.W.,
7th Floor
Washington, D.C. 20006
(counsel for SunCom Mobile & Data, Inc.)

William R. Miller
dba, Russ Miller Rental
3620 Byers Avenue
Fort Worth, TX 76107

Robert Fay
The RF Technologies Group
Police Emergency Radio Services, Inc.
82 Herbert Street
Framingham, MA 01701

Alan R. Shark
American Mobile Telecommunications
Association, Inc.
1150 18th Street, N.W.
Suite 250
Washington, D.C. 20036

Elizabeth R. Sachs, Esq.
Lukas, McGowan, Nace & Gutierrez
1819 H Street, N.W.
Suite 700
Washington, D.C. 20006
(of counsel to American Mobile
Telecommunications Association, Inc.)

David E. Weisman, Esq.
Alan S. Tilles, Esq.
Meyer, Faller, Weisman
and Rosenberg, P.C.
4400 Jenifer Street, N.W.
Suite 380
Washington, D.C. 20015
(counsel for National Association of
Business and Educational Radio, Inc.)

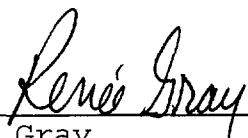
William J. Franklin, Esq.
William J. Franklin, Chartered
1919 Pennsylvania Avenue, N.W.
Suite 300
Washington, D.C. 20006-3404
(counsel for Simron, Inc. and
PCC Management Corp.)

Thomas J. Keller, Esq.
Verner, Liipfert, Bernhard
McPherson and Hand, Chartered
901 Fifteenth Street, N.W.
Suite 700
Washington, D.C. 20005-2327
(counsel for SEA, Inc.)

Robyn G. Nietert, Esq.
Scott C. Cinnamon, Esq.
Brown, Nietert & Kaufman, Chartered
1920 N Street, N.W.
Suite 660
Washington, D.C. 20036
(counsel for Global Cellular
Communications, Inc. and Jean M. Warren)

Russell H. Fox, Esq.
A.B. Cruz III, Esq.
Gardner, Carton & Douglas
1301 K Street, N.W.
Suite 900 East Tower
Washington, D.C. 20005
(counsel for The E.F. Johnson Company)

Harold C. Davis
SmartLink Development L.P.
1269 South Broad Street
Wallingford, CT 06492



Renee Gray